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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DELGADO SHIPPING AGENCIES, INC., in its capacity as agent of the SS "EURYBATES",
Petitioner,

- versus - C.T.A. CASE NO. ~~3089~~ 3069

COMMISSIONER OF CUSTOMS,
Respondent.

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D E C I S I O N

This is an appeal from respondent Commissioner of Customs' decision in Customs Case No. 75-74 dated January 24, 1980, which affirmed the Collector of Manila's decision in Customs Administrative Case No. V-556/70 dated January 28, 1975, imposing an administrative fine of Forty Three Thousand Eight Hundred Fifty Two (₱43,852.00) Pesos on petitioner SS"EURYBATES" and/or its local agent, Delgado Shipping Agencies, Inc., for the violation of Section 2523 of the Tariff and Customs Code, as amended, reading as follows:

> "Sec. 2523. Discrepancy Between Actual and Declared Weight of Manifested Cargo.- If the gross weight of any articles or package described in the manifest exceeds by more than twenty (20) per centum the gross weight as declared in the manifest or bill of lading thereof, and the Collector shall be of the opinion that such discrepancy was due to the carelessness or incompetency of the master or pilot in

> command, owner or employee of the vessel or aircraft, a fine of not more than fifteen (15) per centum of the value of the package or article in respect to which the deficiency exists, may be imposed upon the importing vessel or aircraft."

It appears that on November 13, 1969, the above-named vessel arrived at the Port of Manila conveying and discharging thereat sixty-two (62) bales of assorted textile remnants consigned to Juan Ligan and manifested in the covering Bill of Lading No. 100 a gross weight of only 36,581 lbs. but as found after examination and appraisal the actual gross weight was 85,083 lbs. or a discrepancy of 48,502 lbs. Hence, the actual gross weight of the merchandise exceeded by more than 132% the declared weight vis-a-vis a 20% penalty-free excess allowed by statute. Thus, the imposition of an equivalent fine of ₱43,852 on the value of the merchandise in respect to which the deficiency exists, against the erring vessel of petitioner.

In disputing the legality of the administrative fine, petitioner professes good faith by its reliance on the finality of the shipper's own declaration and the absence of negligence.

We cannot yield assent to petitioner's position.

The administrative fine imposed by the respondent in pursuant to Section 2523, supra, appears premised upon the valid findings that (1) the actual gross weight exceed by more than 20% the declared gross weight and (2) the discrepancy is due to carelessness or incompetency of the master, owner or employee of the vessel.

A discrepancy of more than 132% of the declared weight could not be a mere random quirk but one of positive breach unduly straining the allowable latitude of 20%. And this particular issue has been already decided by the Supreme Court in Commissioner of Customs v. Court of Tax Appeals and Delgado Shipping Agencies, Inc., in its capacity as agent of SS "EURYBATES" (G.R. No. L-49462, June 29, 1979) which in all material respects precisely like the case under consideration, holding, *inter alia*, that a gross underdeclaration "constitutes *per se* evidence of willful negligence or gross incompetence on the part of the vessel's master." And, as further stressed, "The vessel's master, owner or employees are duty bound under the cited codal section under pain of the penalty of fine therein provided to check and verify the correct weight of the cargo or shipment so as to prevent a misdeclaration or underdeclaration of weight. The vessel master's discharge of such obligation imposed by law to properly determine and verify the weight of cargos carried by it is certainly pertinent to and important for the proper assessment of the collectible customs duties and taxes, and is not a burdensome task in the present era of containerized cargos."

The aforesaid view had been expressed with explicit distinctness in previous findings on repeated similar egregious blunders and had been carried into adjudications in a number of cases by this Court, thus, "It is hardly necessary to add that under Section 2523 of the Tariff and Customs Code, the declaration, ascertainment or verification of the correct weight of the cargo at the port of loading is the duty or obligation of the master, pilot, owner, officer or employee of the vessel. If he omits or disregards this duty and a punishable discrepancy between the declared weight and actual weight of the cargo exists, the inevitable conclusion is that he is negligent or careless. (Delgado Shipping Agencies, Inc. v. Commissioner of Customs, C.T.A. Case No. 2685, February 15, 1977; Macondray & Company, Inc.

v. Commissioner of Customs, C.T.A. Case No. 2741, February 3, 1977; Macondray & Co., Inc. v. Commissioner of Customs, C.T.A. Case No. 2656, January 21, 1977 and cases cited therein.) Similarly, if in the exercise or performance of this duty, he is negligent or careless resulting in the commission of excessive discrepancy in the weight of the ship's cargo penalized under the law, carelessness or incompetence is, nonetheless, imputable to him." (International Harvester Macleod, Inc. v. Commissioner of Customs, C.T.A. Case No. 2698, November 25, 1977.) We can do no less but hold the herein petitioner accountable for such deviation from the peremptory demands of the law, the proffered good faith as an encapsulating panacea in bashing the delinquency notwithstanding. This specie of irregularity was not propitious then, it cannot, now.

And, as to petitioner's insistence of proof on the part of respondent of the negligence or carelessness of the master, owner or employee of the vessel, suffice it to say, additionally, that this Court has already unequivocably ruled that under Section 2522 of the Code, the ascertainment or verification of the weight of the ship's cargo at the port of loading is the duty or obligation of the master, pilot, owner or employee of the vessel. Failing thus, the conclusion seems inevitable that there is an unexcusable laxity on the part of the master or owner in exercising the ordinary care and prudence in the commission of excessive discrepancy in the weight of the ship's cargo penalized under the law. Doing business in the Philippines, it behooves the master or owner of the vessel to abide by our customs laws and regulations and to ignore them is nothing short of gross carelessness or incompetence." (Delgado Shipping Agencies, Inc. v. Commissioner of Customs, C.T.A. Case No. 2685, February 15, 1977, certiorari denied, G.R. No. L-46262, July 6, 1977; cited in Commissioner of Customs v. Court of Tax Appeals, et al., supra.) If anything can go wrong it will, so it seems.

The attempt to push such a gross discrepancy of 132% beyond the tolerable statutory limit of 20% sans any penalty becomes illogic and negates "The clear purpose of the codal provision requiring vessels to declare the correct weight of their cargo is to curb smuggling due to such underdeclarations. Hence, imposing the maximum fine on vessels which fail to comply with the obligation to declare the true weight of their cargo promotes the spirit and purpose of the law." (Commissioner of Customs v. Court of Tax Appeals and Delgado Shipping Agencies, Inc., as Agent of SS "EURYBATES", 91 SCRA 262.) Que sera, sera as it must, relief has to be denied petitioner.

WHEREFORE, petition is hereby dismissed with costs.

SO ORDERED.

Quezon City, Metro Manila, December 28, 1981.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge